IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1140 of 2002
With
CIVIL APPLICATION - FOR STAY No. 5982 of 2005
In CIVIL REVISION APPLICATION No. 1140 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HANIF GHULAM AHMED UMARJI ALI - Applicant(s)

Versus

YUSUF MOHAMMED UMARJI ALI CHHABU & 3 - Opponent(s)

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Appearance :
MR MA KHARADI for Petitioner No(s).: 1.

None for Respondent No(s).: 1.
MR SHAKEEL A QURESHI for Respondent No(s).: 1 - 1.
RULE SERVED BY DS for Respondent No(s).: 2, 3,4.
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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 25/07/2005

ORAL JUDGMENT

1. By filing instant petition under section 115 of the Code of Civil Procedure ('the Code' for short) the petitioner seeks to challenge the order dated 23.10.1997 recorded below application Ex.65 in RCS No.45 of 1996 by the learned 3rd Joint Civil Judge (S.D.), Bharuch by which the application filed by the petitioner praying to implead heirs and legal representatives of deceased original defendant No.1 who are respondent Nos.1/1 to 1/8 in this petition, came to be rejected on the ground that the application was not filed in time.

2.Having heard Mr. MA Kharadi, learned advocate for the petitioner and Mr. SA Qureshi, learned advocate for the respondents and having perused the averments made in the petition and the impugned order, it is seen that the petitioner could not bring on record the heirs and legal representatives of deceased defendant No.1 in time. Therefore, the application filed by the petitioner to implead the heirs and legal representatives of deceased defendant No.1 came to be rejected.

3.According to the petitioner, since the record and

proceedings of RCS No.45 of 1996 was lying with the District Court as the petitioner has preferred Misc. Civil Appeal No. 3 of 1997 in the District Court, Bharuch, he could not submit application in time. The petitioner has submitted an application to bring on record the heirs and legal representatives of deceased defendant No.1 before the District Court in appeal proceedings. Therefore, there was no intention on the part of the petitioner not to file application in time before the trial court.

4. In aforesaid view of the matter, according to this court, the learned trial Judge ought to have considered that since record and proceedings of the RCS No.45 of 1996 was lying with the District Court in appeal proceedings the petitioner could not file the application for bringing on record the heirs and legal representatives of deceased defendant No.1 in time.

5. It may be noted that the suit is filed for partition between the parties. Therefore in order to do substantial justice, the learned trial Judge ought to have allowed the application.

6.Seen in the above context, according to this court, the impugned order deserves to be quashed and set aside by allowing this application and thereby granting the application ex.65 and permit the petitioner to implead the heirs and legal representatives of deceased defendant no.1 on the record, as shown in para 4 of the application who are respondents Nos.1/1 to 1/8 in the present revision application.

7.For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The order dated 23.10.1997 passed below application Ex.65 in RCS No. 45 of 1996 by the learned 3rd Joint Civil Judge (S.D.)., Bharuch is hereby quashed and set aside the result of which is that the application Ex.65 is allowed. The petitioner is permitted to implead the heirs and legal representatives of deceased defendant no.1 as party defendant in place of deceased defendant No.1 whose names are shown in para 4 of the application. The petitioner to carry out the amendment in the cause title of the original plaint within a period of 14 days from the date of receipt of the R & P by the trial court from this Court. Rule is made absolute to the aforesaid extent. D.S. is permitted.

8.In view of the above order, Civil Application No.5982 of 2005 which is filed for stay does not assume any survival value and hence the same is disposed of with no order as to costs.

(A.M. Kapadia, J.)

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